

*As of June 3, 2004
Draft for EDA Board Review*

BUSINESS SUBSIDY POLICY AND CRITERIA

TRACY ECONOMIC DEVELOPMENT AUTHORITY
CITY OF TRACY
COUNTY OF LYON
STATE OF MINNESOTA

Public Hearing: June 4, 2004
Adopted: June 4, 2004



Prepared by: EHLERS & ASSOCIATES, INC.
3060 Centre Pointe Drive, Roseville, Minnesota 55113-1105
651-697-8500 fax: 651-697-8555 www.ehlers-inc.com

**TRACY ECONOMIC DEVELOPMENT AUTHORITY
CITY OF TRACY
BUSINESS SUBSIDY POLICY AND CRITERIA**

1 PURPOSE

- 1.01** The purpose of this policy and criteria is to establish the **Tracy Economic Development Authority, Minnesota's** (the "EDA") position as it relates to business subsidies under the **Job Opportunity Building Zones Act** pursuant to *Minnesota Statutes, Sections 469.310 through 469.320* (the "JOBZ Act") and the general **Business Subsidy Act** pursuant to *Minnesota Statutes, Sections 116J.993 through 116J.995* (the "Business Subsidy Act", and with the JOBZ Act, the "Acts"). This policy and criteria shall be used as a guide in processing and reviewing applications requesting business assistance. A copy of this policy shall be submitted to the Minnesota Department of Employment and Economic Development or a successor entity ("DEED") along with the first annual report.
- 1.02** The EDA shall have the option of amending or waiving sections of this policy and criteria when determined necessary or appropriate. The Business Subsidy Act allows the EDA to deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual report to DEED.
- 1.03** Meeting all or a majority of the criteria, however, does not mean that the business subsidy will be awarded or denied by the EDA. The EDA maintains its ability to approve or reject a business subsidy at its discretion, based on the merits of the project and the overall benefit to the community, using the criteria as a means of measuring overall benefit.

2. STATUTORY LIMITATIONS

- 2.01** In accordance with the **EDA's Business Subsidy Policy and Criteria**, assistance requests must comply with applicable laws of the State of Minnesota.
- 2.02** Any amendments or modifications to the Acts shall amend or modify the terms and definitions of this policy and criteria without any further actions of the EDA.

3. DEFINITIONS

- 3.01 Business Subsidy Generally.** A Business Subsidy, as further defined herein and in the Business Subsidy Act shall include, but not be limited to one of the following types of subsidies provided by the EDA:
- A. Loan,
 - B. Grant,
 - C. Tax abatement,
 - D. TIF or other tax reduction or deferral,
 - E. Guarantee of payment,

- F. Contribution of property or infrastructure,
- G. Preferential use of governmental facilities,
- H. Land contribution, or
- I. Other specified subsidy.

A Business Subsidy does not include assistance of less than \$25,000, business loans or loan guarantees of less than \$75,000, assistance generally available to all businesses, housing assistance, or any other type of assistance specifically excluded in the Business Subsidy Act.

3.02 Job Opportunities Building Zone (JOBZ) Business Subsidy. Under the JOBZ Act, a Business Subsidy includes the subsidy provided through the following set of tax benefits to certain qualified businesses:

- A. Exemption from individual income taxes,
- B. Exemption from corporate franchise taxes,
- C. Exemption from state sales and use tax and any local sales and use taxes on qualifying purchases,
- D. Exemption from state sales tax on motor vehicles and any local sales tax on motor vehicles,
- E. Exemption from property tax,
- F. Exemption from wind energy production tax, and
- G. Jobs credit.

3.03 Further Definitions. The following defined terms apply equally to all business subsidies. Any terms not defined herein shall have the meanings set forth in the Acts.

“Benefit Date” the later of either the date on which the Business Subsidy Agreement is executed or the date on which any amount of Business Subsidy is first provided to the Business Subsidy Recipient.

“Business Subsidy” means a state or local government agency grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business, and as defined by the Business Subsidy Act.

“Business Subsidy Agreement” means the agreement between the Recipient as defined herein and the EDA entered into pursuant to the Business Subsidy Act describing the subsidy, specific tangible goals (i.e., create number of jobs, establish minimum wage rates and time periods in which goals will be achieved) and providing remedy for failure to achieve goals and providing for reporting to the State of Minnesota.

“Business Subsidy Recipient” means any business entity that receives a business subsidy as defined by the Business Subsidy Act and that has signed a Business Subsidy Agreement with the EDA.

“Business Subsidy Report” means the annual reports submitted by the EDA each year for each business receiving a Business Subsidy in the EDA in order to comply with the Business Subsidy Act.

“JOBZ Business Subsidy” means tax exemptions or tax credits available to a **Qualified Business** located in a **Zone**, as defined by the Business Subsidy Act, and as modified by amendments to these Acts.

“Qualified Business” means a person that carries on a trade or business at a place of business located within a **Zone** and which complies with the reporting requirements specified therein and the criteria set forth herein, except in the case of a **Relocating Business**, as defined herein, in which case such person must also meet the requirements described in the JOBZ Act, which as of March 2004 were to increase employment or to make a capital investment.

“Relocating Business” A person that relocates a trade or business from outside a **Zone** into that **Zone** according to the criteria set forth in the JOBZ Act, which as of March 2004 meant ceasing one or more operations or functions at the non-**Zone** location and beginning performing substantially the same functions inside the Subzone or by reducing employment at the non-**Zone** location starting one year before and ending one year after beginning operations in the **Zone**, where the relocated employees in the **Zone** are engaged in the same line of business as the employees at the location where employment was reduced.

“Relocation Agreement” means a binding written agreement between a **Relocating Business** and the Commissioner of DEED pledging that the qualified business shall meet the requirements of the JOBZ Act, which as of March 2004 meant either: (a) increase full-time or full-time equivalent employment in the first full year of operation within the job opportunity building zone by at least 20 percent, *or* (b) make a capital investment on the property equivalent to 10% of the gross revenues of operation that was relocated in the immediately preceding taxable year. As of March 2004, a Relocation Agreement also had to provide for repayment of all tax benefits if the requirements of (a) or (b) are not met.

“Subzone” means the parcel or parcels of land within the Region V **Zone** in the City which the Commissioner of DEED has now, or at any time in the future shall, designate to receive certain tax credits and exemptions specified under the JOBZ Act.

“Zone” means a Job Opportunity Building Zone or an Agricultural Processing Facility Zone designated by the Commissioner of DEED under the JOBZ Act.

4. ELIGIBLE USES FOR THE RECEIPT OF BUSINESS ASSISTANCE

4.01 As a matter of adopted policy, the EDA will consider using a business assistance tool to assist private developments only in those circumstances in which the proposed private projects meet one or more of the following uses:

- A. To redevelop blighted or under-utilized areas of the community.
- B. To meet the following housing-related uses:
 - 1. To provide a diversity of housing not currently provided by the private market.
 - 2. To provide a variety of housing ownership alternatives and housing choices.
 - 3. To promote affordable housing for low or moderate-income individuals.

4. To promote community stabilization and revitalization by the removal of blight and the upgrading in existing housing stock in residential areas.
- C. To remove blight and encourage redevelopment in the commercial and industrial areas of the City of Tracy, Minnesota (the "City") in order to encourage high levels of property maintenance and private reinvestment in those areas.
- D. To enhance economic growth by increasing the tax base of the City in order to ensure the long-term ability of the City to provide adequate services for its residents while lessening the reliance on residential property tax.
- E. To retain high quality local jobs, create high quality local job growth, and provide diversity in that job base.
- F. To increase the local business and industrial market potential of the City.
- G. To encourage additional unsubsidized private development in the area, either directly, or through secondary "spin-off" development.
- H. To offset increased costs of redevelopment, over and above those costs that a business would incur in normal development.
- I. To accelerate the development process and to achieve development on sites which would not be developed without this assistance.

5. BUSINESS ASSISTANCE PROJECT APPROVAL CRITERIA

- 5.01 All new projects approved by the EDA should meet the following mandatory minimum approval criteria. However, it should not be presumed that a project meeting these criteria would automatically be approved. Meeting these criteria creates no contractual rights on the part of any potential developer.
- A. The assistance shall be provided within applicable state legislative restrictions, State Auditor interpretation, debt limit guidelines, and other appropriate financial requirements and policies.
 - B. The project should meet one or more of the uses identified in Section 4, Eligible Uses for the Receipt of Business Assistance.
 - C. The project must be in accordance with the City's comprehensive plan and zoning ordinances, or required changes to the City's comprehensive plan and zoning ordinances must be under active consideration by the City at the time of approval.
 - D. The assistance will not be provided to projects that have the financial feasibility to proceed without the benefit of the assistance. Assistance will not be provided solely to broaden a business's profit margins on a project. Prior to consideration of a business assistance request, the EDA may undertake an independent underwriting of the project to help ensure that the request for assistance is valid with underwriting costs to be reimbursed by the business in all instances which shall be in addition to the application fee described herein.
 - E. Prior to approval of business assistance, the business shall provide any required market and financial feasibility studies, appraisals, soil boring, information provided to private lenders

for the project, and other information or data that the City or its financial consultants may require in order to proceed with an independent underwriting.

- F. Any business requesting business assistance should be able to demonstrate past successful general development capability as well as specific capability in the type and size of development proposed.
- G. The business must continue operations of the project for at least five years after the Benefit Date in order to stabilize its occupancy, to establish the project management, and to initiate repayment of the business assistance. If the business is a Qualified Business, that business shall agree to continue to operate in the City for the duration of the Zone.
- H. The level of business assistance funding should be reduced to the lowest possible level and least amount of time by maximizing the use of private debt and equity financing first, and then using other funding sources or income producing vehicles that can be structured into the project financing, prior to using additional business assistance funding.

6. BUSINESS ASSISTANCE PROJECT EVALUATION CRITERIA

- 6.01** All projects will be evaluated by the EDA Board (the "EDA Board") on the following criteria for comparison with other proposed business assistance projects reviewed by the EDA, and for comparison with other subsidy standards (where appropriate). It is realized that changes in local markets, costs of construction, and interest rates may cause changes in the amounts of business assistance subsidies that a given project may require at any given time.

Some criteria, by their very nature, must remain subjective. However, wherever possible "benchmark" criteria have been established for review purposes. The fact that a given proposal meets one or more "benchmark" criteria does not mean that it is entitled to funding under this policy, but rather that the EDA is in a position to proceed with evaluations of (and comparisons between) various business assistance proposals, using uniform standards whenever possible.

Following are the evaluation criteria that will be used by the EDA:

- A. All proposals should, in the opinion of the EDA Board, optimize the private development potential of a site.
- B. All proposals should, in the opinion of the EDA Board, create the highest feasible number of jobs on the site.
- C. Business assistance will not be provided when the relocating or new business requesting assistance would be in direct competition with an established business in the community.
- D. All proposals should, in the opinion of the EDA Board, create the highest possible ratio of property taxes paid before and after redevelopment. Given the different assessment circumstances in the EDA, this ratio will vary widely.
- E. Proposals should usually not be used to support speculative industrial, commercial, and office projects.
- F. Assistance will usually not be used in a project that involves an excessive land and/or property price.

- G. All business assistance projects will need to meet the "but for" test. Assistance will not be used unless the need for the EDA's economic participation is sufficient that, without that assistance the project could not proceed in the manner as proposed.
- H. Business assistance will not be used when the business's credentials, in the sole judgment of the EDA, are inadequate due to past track record relating to: completion of projects, general business reputation and/or bankruptcy, or other problems or issues considered relevant by the EDA.
- I. Business assistance will not normally be used for projects that would generate significant environmental problems in the opinion of the local, state, or federal governments.
- J. Business assistance funding should not be provided to those projects that fail to meet good public policy criteria as determined by the EDA Board, including: poor project quality; projects that are not in accord with the comprehensive plan, zoning, redevelopment plans, and City policies; projects that provide no significant improvement to surrounding land uses, the neighborhood, and/or the City; projects that do not have significant new, or retained, employment; projects that do not meet financial feasibility criteria established by the EDA; and projects that do not provide the highest and best use for the property.
- K. Except where job creation or job retention is not a goal, all projects receiving business assistance must create a minimum of one new full-time equivalent job in the community which provides employer paid basic health insurance with a minimum wage and health benefits that total at least the rate per hour of 110% of the current poverty level for a family of four within two years from the Benefit Date. 110% of 2003 poverty level for a family of four in the State of Minnesota is \$9.73 per hour.
- L. The EDA shall have an overall goal that City residents hold a majority of new jobs created under this policy. It is expected that all qualified businesses or recipients shall have a quantified target for the number of residents to be hired.
- M. In the case where job creation or job retention is not a goal, the business must meet at least one of the following minimum requirements:
 - 1. The Business Subsidy accomplishes the removal, rehabilitation or redevelopment of, or prevention of development or spread of, a blighted area as defined by Minnesota Statutes, Section 469.002, Subdivision 11, or constitutes a cost of correcting conditions that permits designation of a redevelopment district or renewal and renovation district under Minnesota Statutes, Section 469.174 to 469.179; or
 - 2. The Business Subsidy improves public infrastructure or public facilities, including without limitation streets, sewers, storm sewers, streets, parks, recreational facilities, and other City facilities; or
 - 3. The Business Subsidy removes physical impediments to development of land, including without limitation poor soils, bedrock conditions, steep slopes, or similar geotechnical problems.

The above requirements must be expressed as specific, measurable and tangible goals in each Business Subsidy Agreement. The job and wage goals that would otherwise be required may be set at zero. In addition, in the case where a business is qualified to receive job opportunity building zone tax benefits, the requirements of a Relocation Agreement must be met.

- N. Any Business Subsidy Recipient must pay back assistance received if the job and wage goals or other specified goals are not met within two (2) years of the Benefit Date or such time as permitted by the Acts as they may be amended. For all Business Subsidies, assistance provided by the EDA must be paid back, with interest as determined in the Business Subsidy Act, to the EDA, or at the EDA's request, to the account created under the Business Subsidy Act. Any repayment may be prorated by the EDA to reflect partial fulfillment of goals. The EDA may, after a public hearing, extend the period for meeting job and wage goals for up to one year and may pursuant to the procedure in the Acts, extend the period for meeting other goals for any period specified by the EDA. For JOBZ Business Subsidies, state tax exemptions must be paid back to the State of Minnesota and property tax exemptions paid back to the Subzone county, all pursuant to the JOBZ Act. The Commissioner of DEED may waive, without a hearing, the necessity of such state and county repayment if in consultation with EDA officials the Commissioner determines that requiring repayment is not in the best interest of the state or EDA and the business ceased operating as a result of circumstances described in the JOBZ Act.

6.04 Following are the procedures that will be used by the EDA:

- A. Meet with appropriate City staff to discuss the scope of the project, public participation being requested, and other information as may be necessary.
- B. Completion of Pre-Application Business Assistance Financing form. This form shall be submitted to the EDA Board.
- C. The EDA Board shall review the request on a preliminary basis as to the feasibility of the project.
- D. The application shall be placed on the EDA Board agenda for concept review. The applicant may make a formal presentation of the project. The EDA staff and/or their consultants shall present their findings.
- E. If the EDA Board's preliminary concept review is positive, the applicant may elect to file a formal application accompanied by an administrative fee as well as annual fees for monitoring and reporting as required by statute. The amount of these fees will be determined based upon the complexity of the project and corresponding requirements for administrative services.
- F. Following the necessary financial analysis and preparation of detailed plans, the EDA Board shall take action on the project. If approved, the staff will be directed to undertake the following steps:
 - Prepare a Business Subsidy Agreement based upon the terms approved
 - Prepare a development plan and tax increment financing plan if required
- G. The EDA may require the business to provide additional security, such as a letter of credit, a security bond, or a guaranty from an affiliate or third party.

**TRACY ECONOMIC DEVELOPMENT AUTHORITY
PRE-APPLICATION
BUSINESS ASSISTANCE FINANCING**

Legal name of applicant: _____

Address: _____

Telephone number: _____

Name of contact person: _____

REQUESTED INFORMATION

Addendum shall be attached hereto addressing in detail the following:

- 1 A map showing the exact boundaries of proposed development.
2. Give a general description of the project including size and location of building(s); business type or use; traffic information including parking, projected vehicle counts and traffic flow; timing of the project; estimated market value following completion.
3. The existing comprehensive land use designation and zoning of the property. Include a statement as to how the proposed development will conform to the land use designation and how the property shall be zoned or petitioned to be rezoned.
4. A statement identifying how the business assistance will be used and why it is necessary to undertake the project.
- 5 A statement identifying the public benefits of the proposal including estimated increase in property valuation, new jobs to be created, hourly wages and other community assets.
6. A written description of the developer's business, principals, history and past projects.

I understand that the application fee will be used for City staff and consultant costs and may be partially refundable if the request for assistance is withdrawn. Refunds will be made at the discretion of the EDA Board and be based on the costs incurred by the EDA prior to the withdrawal of the request for assistance. If the initial application fee is insufficient, I will be responsible for additional deposits.

SIGNATURE

Applicant's signature: _____

Date _____

**TRACY ECONOMIC DEVELOPMENT AUTHORITY
APPLICATION FOR BUSINESS ASSISTANCE FINANCING**

GENERAL INFORMATION:

Business Name: _____

Date: _____

Address _____

Type (Partnership, etc.) _____

Authorized Representative: _____

Phone: _____

Description of Business: _____

Legal Counsel: _____

Address _____

Phone: _____

FINANCIAL BACKGROUND:

1. Have you ever filed for bankruptcy? _____

2. Have you ever defaulted on any loan commitment? _____

3. Have you applied for conventional financing for the project? _____

4. List financial references:

a. _____

b. _____

c. _____

5. Have you ever-used business assistance financing before? _____

If yes, what, where and when? _____

PROJECT INFORMATION:

Location Proposed Proj _____

Amount Business Ass requested _____

Need for Business Assistance: _____

Pre ownership of site: _____

umber of permanent jobs created result of project? _____

Es annual sales Present _____

Market value of project following completion. _____

Anticipated date: _____ Completion Date: _____

FINANCIAL INFORMATION:

Estimated project related

Land acquisition _____

Site development

Building

d. Equipment

Architectural/engineering fee

Legal fees

Off-site development

Source of financing:

Private financing institution _____

Business assistance funds

Other public funds

Developer eq. ity

PLEASE INCLUDE:

1. Preliminary financial commitment from bank.
2. Plans and drawing of project.
3. Background material of company.
4. Pro Forma analysis.
5. Financial statements.
6. Statement of property ownership or control.
7. Payment of application fee.

TRACY ECONOMIC DEVELOPMENT AUTHORITY
CITY OF TRACY, MINNESOTA

RESOLUTION NO. 052004-01

**RESOLUTION CALLING FOR A PUBLIC HEARING BY THE TRACY
ECONOMIC DEVELOPMENT AUTHORITY ON THE ADOPTION OF
CRITERIA FOR AWARDING BUSINESS SUBSIDIES.**

WHEREAS, the State Legislature has adopted *Minnesota Statutes*, Sections 116J.993 to 116J.995 (the "Statute") governing business subsidies granted by cities; and

WHEREAS, the Tracy Economic Development Authority (the "EDA") fits the definition of "grantor" in the Statute; and

WHEREAS, each grantor is required to adopt a set of criteria for awarding business subsidies.

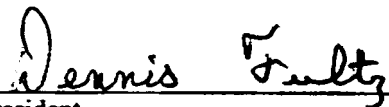
NOW, THEREFORE, BE IT RESOLVED by the Board (the "Board") for the Tracy Economic Development Authority, City of Tracy, Minnesota, as follows:

Section 1. Public Hearing. The EDA shall meet on June 4, 2004, at approximately 7:15 a.m., to hold a public hearing on the proposed adoption of criteria for awarding business subsidies in accordance with the Statute; and

Section 2. Notice of Public Hearing. City staff is authorized and directed to work with Ehlers & Associates, Inc., to prepare the criteria. The Economic Development Director is authorized and directed to cause notice of the hearing to be published at least once in the official newspaper of the City at least 10 days but no more than 30 days prior to June 4, 2004, and to place a copy of the proposed criteria on file in the Economic Development Director's office at City Hall and to make such copy available for inspection by the public.

Dated: May 7, 2004

Adopted:



President

ATTEST



EDA Secretary

**TRACY ECONOMIC DEVELOPMENT AUTHORITY
CITY OF TRACY
LYON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 062004-01

RESOLUTION ADOPTING BUSINESS SUBSIDY CRITERIA

WHEREAS, Minnesota Statutes, Sections 116J.993 through 116J.995 (the "Statutes") require the adoption of criteria for the granting of business subsidies as defined in the Statutes; and,


WHEREAS, the Tracy Economic Development Authority (the "EDA") has determined that it is necessary and appropriate to adopt business subsidy criteria pursuant to the Statutes; and,

WHEREAS, the EDA has performed all actions required by law to be performed prior to the adoption and approval of the proposed business subsidies, including the holding of a public hearing upon published notice as required by law on May 12, 2004.

NOW, THEREFORE, BE IT RESOLVED by the EDA Board of the Tracy Economic Development Authority, that the business subsidy criteria, contained in Exhibit A of this resolution are hereby approved, ratified, established, and adopted and shall be placed on file at the City of Tracy, Minnesota.

Dated: June 4, 2004.

ATTEST:



President



Secretary

NOTICE OF PUBLIC HEARING

TRACY ECONOMIC DEVELOPMENT AUTHORITY CITY OF TRACY LYON COUNTY STATE OF MINNESOTA

NOTICE IS HEREBY GIVEN that the Tracy Economic Development Authority (the "EDA"), City of Tracy, Lyon County, State of Minnesota, will hold a public hearing on June 4, 2004, at approximately 7:15 a.m. at the Tracy City Council Chambers in City Hall, Tracy, Minnesota, regarding the adoption of business subsidy criteria by the EDA, under *Minnesota Statutes*, Sections 116J.993 through 116J.995.

A copy of the draft business subsidy criteria is available for inspection at City Hall during regular business hours.

All interested persons may appear at the hearing and present their views orally or prior to the meeting in writing.

Dated: May 7, 2004.

**BY ORDER OF THE TRACY ECONOMIC
DEVELOPMENT AUTHORITY, MINNESOTA**

/s/ Robert Gervais

Economic Development Director